

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 116 of 2015**

Anjani Kumar Jaiswal, S/o Shri Sita Ram Jaiswal, Aged about -44 years,
R/o Village – Matiyari, Tehsil – Seepat, District – Bilaspur (C.G.) Present
R/o Jarhabhata, Ward No.-10, Bilaspur, Tahsil & District – Bilaspur (C.G.)

---- Appellant/Plaintiff.

Versus

1. Umend Patel, S/o Laxman Patel, aged about -46 years,
2. Suresh Patel, S/o Laxman Patel, Aged about -40 years,
3. Smt. Fulbai Patel, W/o Suresh Patel, Aged about -36 years,

All R/o Fazal Bada, Juna Bilaspur, Tahsil, Post & District- Bilaspur
(C.G.)

---- Respondents/defendants

For Appellant	:	Mr. K.A. Ansari, Senior Advocate with Mr. Devesh G.Kela, Advocate
For Respondent No. 3	:	Ms. Sunita Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

29/08/2018

(1) The substantial question of law involved, formulated and to be answered in this plaintiff's ' second appeal states as under:

“Whether the First Appellate Court is justified in dismissing the first appeal by rejecting the application for condonation of delay in filing the same under Section 5 of the Indian Limitation Act, 163 ?

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court).

(2) The imperative facts required to be noticed for adjudication of this appeal are as under:

(2.1) The plaintiff's suit for eviction and arrears of rent filed on the ground of Section 12(1) (a)(e) of the Chhattisgarh Accommodation Control Act, 1961 was dismissed by the trial Court on 30.10.2010, in which, the plaintiff applied for certified copy of the order on 22.1.2011 and received the same on 21.06.2011 and the first appeal has been filed on 22.06.2011 along with application for condonation of delay in filing the appeal stating inter alia that the Advocate has not informed him about the dismissal of the civil suit and as soon as he came to know about the dismissal of the civil suit from other sources, he obtained copy of the same and filed first appeal under Section 96 of the Code of Civil Procedure (henceforth "CPC").

(2.2) In support of application for condonation of delay in filing the first appeal, the plaintiff has examined his counsel Radheshyam Jaiswal (AW-1), who has stated in her evidence that as his wife was unwell, he remained busy in her treatment and, as such, he could not inform the plaintiff about the dismissal of suit right in time.

(3) The First Appellate Court did not found favour with the application for condonation of delay and finding no sufficient cause for delay in filing the appeal, dismissed the application for condonation of delay and consequently appeal was also dismissed. Against which, this second appeal has been preferred by the appellant/plaintiff in which the substantial question of law formulated for consideration and which has been incorporated in the opening paragraph of the judgment.

(4) Learned Senior Counsel appearing for the appellant, would submit that the finding recorded by the first appellate Court holding that sufficient cause has not been shown for condoning the delay in filing the first appeal is perverse and contrary to the law laid down by the Supreme Court in **N. Balakrishnan v. M. Krishnamurthy**¹.

1 (1998) 7 SCC 123

(5) Per contra, learned counsel appearing for the respondent No.3, while supporting the impugned order would submit that no sufficient cause has been shown by the plaintiff for condoning the delay in filing the first appeal.

(6) I have heard learned counsel appearing for the parties and perused the records of both the courts below including judgment and decree impugned with utmost circumspection.

(7) The Supreme Court in **N. Balakrishnan** (supra) observed that the sufficient cause has to be construed liberally especially when the delay is not deliberate and *mala fide*. Paras 11 & 12 of the said decision are as under :

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their

remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the Court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and State of West Bengal Vs. Administrator, Howrah Municipality.*”

(8) Thus, applying the ratio laid down by the Supreme Court in **N. Balakrishnan** (supra) to the facts of the case at hand, it would appear that the plaintiff's counsel Shri Radheshyam Jaiswal could not inform the plaintiff about the dismissal of the civil suit on account of illness of his wife and, therefore, the delay occurred in filing the appeal, even otherwise, the plaintiff would not get any benefit by not filing appeal right in time as his suit was already dismissed by the trial Court. In the considered opinion of this Court, sufficient cause was shown by the plaintiff before the first appellate Court for condoning the delay in filing the appeal.

(9) As a sequel, the instant second appeal is allowed. The impugned order dated 12.12.2014 is set aside; delay in filing the first appeal is condoned; and restored the appeal bearing civil appeal No. 54-A/2014 to its original file of the Court of Additional District Judge, Bilaspur, for hearing and disposal in accordance with law on its own merits, as expeditiously as possible, preferably within a period of four months from the date of receipt of record and certified copy of this order, as the first appeal was filed by the plaintiff on 22.06.2011.

(10) Parties are directed to appear before the first appellate Court on 17th September, 2018.

(11) Decree be drawn-up accordingly.

(12) Registry is directed to return back the records to the first appellate Court forthwith.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

